JAMES A. BECKER

IBLA 94-700 Decided March 13, 1997

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void. MMC 19743, MMC 21821, and MMC 21822.

Affirmed.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

   An applicant for a small miner exemption from payment of rental fees under the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, P.L. 102-381, 106 Stat. 1374, 1378-79 (1992), was required to file a certified statement by Aug. 31, 1993, for each of the assessment years (ending Sept. 1, 1993, and Sept. 1, 1994) for which the exemption was claimed. In the absence of a small miner exemption from the rental fee requirement, failure to pay the fees in accordance with the Act and regulations resulted in a conclusive presumption of abandonment.

2. Administrative Authority: Estoppel--Estoppel

   One precondition for the invocation of estoppel against the Government in matters concerning the public lands is the existence of affirmative misconduct on the part of the Government. For a misrepresentation to be affirmative misconduct, it must be in the form of a crucial misstatement in an official written decision.

APPEARANCES: James A. Becker, Butte, Montana, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

James A. Becker has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated June 16, 1994, declaring the Glittering Hill (MMC 19743), Glittering Hill Apex (MMC 21821), and Glittering Hill Addition (MMC 21822) lode mining claims abandoned and void for failure to pay rental fees or to submit certificates of exemption for

both the 1993 and 1994 assessment years, prior to the August 31, 1993, deadline.

The record reflects that a certification of exemption for the 1993 assessment year covering the subject mining claims was received by BLM on November 30, 1993, along with a copy of the recorded 1993 affidavit of labor. In its June 16 decision, BLM rejected this filing and declared the claims abandoned and void, noting that under the provisions of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (1992 Act), P.L. 102-381, 106 Stat. 1374, 1378-79 (1992), those seeking a small miner exemption from the rental payments imposed by the Act were required to file, on or before August 31, 1993, separate statements for both the 1993 and 1994 assessment years. In effect, Becker's filing was rejected because it was both untimely and covered only the 1993 assessment year.

In his statement of reasons for this appeal, Becker contends he made every attempt to satisfy the new laws based upon information provided by BLM. Appellant notes that he attended a number of meetings with BLM staff and asserts that:

> The information we got at these meetings was that we would meet the requirements for the small miners Certificate of Exemption if we mailed our Plan of Operation and our Small Miners Exclusion Statement at the time we mailed our annual Affidavit of Representation. We did this and mailed all three forms on November 30, 1993 as we were instructed. We were told that in the year 1994 we would have to mail in our Small Miners Exclusion Statement by August 26, 1994, but that date did not apply for the year 1993.

(Statement of Reasons at 1.)

The 1992 Act provided, in relevant part, that:

> [F]or each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314 (a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of $100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

106 Stat. 1378. The Act contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of the $100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

The Act further provided, subject to various conditions, for an exemption from the payment of rental fees for claimants holding 10 or fewer claims, the so-called small miner exemption. Id. Additionally, the Act directed "[t]hat failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant." 106 Stat. 1379.

[1] Under the Act, claimants holding 10 or fewer mining claims, millsites, and/or tunnel sites were afforded the opportunity to seek an exception, known as the "small miner" exemption, from the annual rental requirement. 106 Stat. 1378-79; 43 CFR 3833.1-5(d), 3833.1-6, 3833.1-7 (1993); see William B. Wray, 129 IBLA 173 (1994). Thus, a claimant could either elect to pay the rental fee or, alternatively, if a claimant sought to avail himself of the small miner exemption, perform the assessment work, certify by August 31, 1993, the performance of such work (prospectively in the case of work for the assessment year ending September 1, 1994), and meet the filing requirements of section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1994). See 106 Stat. 1378, 1379; 43 CFR 3833.1-7 (1993). The applicant for a small miner exemption was required, however, to file a separate request by August 31, 1993, for each of the assessment years for which he was seeking an exemption. 43 CFR 3833.1-7(d) (1993); Richard L. Shreves, 132 IBLA 138 (1995); Edwin L. Evans, 132 IBLA 103 (1995). Where an applicant failed to pay the rental fee for either of the assessment years and a certificate of exemption was not timely filed for either of these assessment years, the claims are properly deemed abandoned and void. Richard L. Shreves, supra; Jesse L. Cleary, 131 IBLA 296 (1994). Since Becker clearly did not timely make the requisite filings or tender the necessary rentals, the claims must be considered to be abandoned and void.

[2] Appellant asserts that he relied to his detriment on information received from BLM. The Board, however, has well-established rules governing consideration of estoppel questions. These rules were summarized in Ptarmigan Co., 91 IBLA 113, 117 (1986), aff'd sub nom. Bolt v. United States, 944 F.2d 603 (9th Cir. 1991):

> First, we have adopted the elements of estoppel described by the Ninth Circuit Court of Appeals in United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970):
>
> > Four elements must be present to establish the defense of estoppel: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.
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> Id. at 96 (quoting Hampton v. Paramount Pictures Corp., 279 F.2d 100, 104 (9th Cir. 1960)). See State of Alaska, 46 IBLA 12, 21

(1980); Harry E. Reeves, 31 IBLA 242, 267 (1977). Second, we have adopted the rule of numerous courts that estoppel is an extraordinary remedy, especially as it relates to the public lands. Harold E. Woods, 61 IBLA 359, 369 (1982); State of Alaska, supra. Third, estoppel against the government in matters concerning public lands must be based on affirmative misconduct, such as misrepresentation or concealment of material facts. United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978); D.F. Colson, 63 IBLA 121 (1982); Arpee Jones, 61 IBLA 149 (1982). Finally, we have noted that while estoppel may lie where reliance on Governmental statements deprived an individual of a right which he could have acquired, estoppel does not lie where the effect of such action would be to grant an individual a right not authorized by law. See Edward L. Ellis, 42 IBLA 66 (1979).

A review of the record shows clearly that Becker cannot establish the necessary elements to invoke estoppel with respect to the instant appeal. While Becker asserts that he made a good faith effort to comply with the provisions of the 1992 Act and that, based on representations of BLM officials, he believed that submission of the small miner exemption certification could be made after the August 31, 1993, deadline imposed by the express terms of the 1992 Act, these contentions fail to provide an adequate basis for an estoppel.

As we reiterated in James W. Bowling, 129 IBLA 52 (1994), for a misrepresentation to be affirmative misconduct sufficient to justify invocation of estoppel, it must be in the form of a crucial misstatement in an official written decision. See also Peak River Expeditions (On Reconsideration), 98 IBLA 13, 15-16 (1987); Steve E. Cate, 97 IBLA 27, 32 (1987); Marathon Oil Co., 16 IBLA 298, 317 (1974). The reason that both the Department and the courts have required that estoppel claims generally be based on written documents is simple. Oral advice, by its nature, provides an unstable foundation on which to base future actions. This is a function not merely of the very real possibility of misunderstandings between the participants but because, as the Supreme Court noted in Heckler v. Community Health Services, 467 U.S. 51, 65 (1984), "[w]ritten advice, like a written judicial opinion, requires its author to reflect about the nature of the advice that is given to the citizen, and subject that advice to the possibility of review, criticism and reexamination." For these reasons, the Board has consistently refused to entertain estoppel claims unless based on an official written document, particularly in those situations, such as the one herein, wherein the effect of the invocation of estoppel would be to nullify an express Congressional directive that claims for which neither rental payments nor certifications for a small miner exemption were received on or before August 31, 1993, were abandoned and void.

Moreover, there is an additional reason why estoppel does not lie in the instant appeal. Regardless of the fact that he may have actually been ignorant of the obligations imposed by the Act, Becker is properly charged with constructive knowledge of the statute and implementing regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85 (1947); John Plutt, Jr., 53 IBLA 313, 319 (1981). Appellant, therefore, cannot, as a

matter of law, be deemed ignorant of the true facts as required by the standards enunciated in United States v. Georgia-Pacific, supra, and the Department is not estopped from applying the law according to its plain meaning.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge